

ADLER POLLOCK & SHEEHAN P.C.

One Citizens Plaza, 8th floor  
Providence, RI 02903-1345  
Telephone 401-274-7200  
Fax 401-751-0604 / 351-4607

175 Federal Street  
Boston, MA 02110-2890  
Telephone 617-482-0600  
Fax 617-482-0604

[www.apslaw.com](http://www.apslaw.com)

October 26, 2005

Via Hand Delivery and Electronic Mail

Luly Massaro, Commission Clerk  
Public Utilities Commission  
89 Jefferson Boulevard  
Warwick, Rhode Island 02888

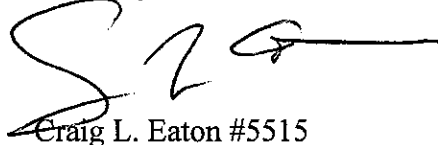
Re: Docket No.: 3692; Direct Testimony of Cox Rhode Island Telcom, LLC

Dear Luly:

Enclosed for filing in the above-referenced Docket is an original and nine copies of the direct testimony of F. Wayne Lafferty on behalf of Cox Rhode Island Telcom, LLC.

If you have any questions regarding this filing, please give me a call.

Sincerely,



Craig L. Eaton #5515

Attorney for Cox Rhode Island Telcom, LLC

Enclosure

cc: Service List (with enclosure) (via regular U.S. Mail, postage prepaid and electronic mail)

359238\_1.doc



Member firms of the State Capital Global Law Firm Group practice independently and not in a relationship for the joint practice of law.

**Verizon RI – Successor Alternate Form of Regulation – Service List for Docket No. 3692**  
**Updated 10/26/05**

<b>Name/Address</b>	<b>E-mail Distribution</b>	<b>Phone/Fax</b>
Theresa O'Brien, Dir. Regulatory Affairs Verizon Rhode Island 234 Washington St. Providence RI 02903	<a href="mailto:Theresa.obrien@verizon.com">Theresa.obrien@verizon.com</a>	401-525-3060 401-525-3064
Alexander W. Moore, Esq. Verizon New England 185 Franklin St. Boston MA 02110	<a href="mailto:Alexander.w.moore@verizon.com">Alexander.w.moore@verizon.com</a>	617-743-6744 617-737-0648
Leo Wold, Esq. Dept. of Attorney General 150 South Main St. Providence RI 02903	<a href="mailto:Lwold@riag.state.ri.us">Lwold@riag.state.ri.us</a>	401-222-2424
	<a href="mailto:sscialabba@ripuc.state.ri.us">sscialabba@ripuc.state.ri.us</a>	401-273-4270
	<a href="mailto:bkent@ripuc.state.ri.us">bkent@ripuc.state.ri.us</a>	
	<a href="mailto:jlanni@ripuc.state.ri.us">jlanni@ripuc.state.ri.us</a>	
	<a href="mailto:mbotelho@riag.state.ri.us">mbotelho@riag.state.ri.us</a>	
William Lueker, Esq. Dept. of Attorney General 150 South Main St. Providence RI 02903	<a href="mailto:wlueker@riag.state.ri.us">wlueker@riag.state.ri.us</a>	401-222-2424 401-273-4270
Thomas H. Weiss Weiss Consulting, Inc. 5508 Lake Edge Drive Holly Springs, NC 27540	<a href="mailto:Tweiss1@nc.rr.com">Tweiss1@nc.rr.com</a>	919-557-9771
Jose M. Jimenez, V.P. - Regulatory Affairs Cox RI Telcom LLC 9 J.P. Murphy Highway West Warwick, RI 02893	<a href="mailto:jose.jimenez@cox.com">jose.jimenez@cox.com</a>	401-615-1790 401-615-1587
Craig Eaton, Esq. (for Cox) Adler Pollock & Sheehan One Citizens Plaza, 8 <sup>th</sup> Floor Providence RI 02903-1345	<a href="mailto:Ceaton@apslaw.com">Ceaton@apslaw.com</a>	401-274-7200 401-751-0604
Alan Shoer, Director of Regulatory Affairs Conversent Communications of RI 24 Albion Road Lincoln RI 002865	<a href="mailto:Ashoer@conversent.com">Ashoer@conversent.com</a>	401-834-3300 401-834-3319
<b>File an original &amp; nine (9) copies w/:</b> Luly E. Massaro, Commission Clerk Public Utilities Commission 89 Jefferson Boulevard Warwick RI 02888	<a href="mailto:Lmassaro@puc.state.ri.us">Lmassaro@puc.state.ri.us</a>	401-941-4500
	<a href="mailto:Sfrias@puc.state.ri.us">Sfrias@puc.state.ri.us</a>	401-941-1691
	<a href="mailto:Anault@puc.state.ri.us">Anault@puc.state.ri.us</a>	

**DIRECT TESTIMONY**  
**OF**  
**F. WAYNE LAFFERTY**  
**ON BEHALF OF**  
**COX RHODE ISLAND TELCOM, L.L.C.**  
**October 26, 2005**

1                    **A. IDENTIFICATION AND QUALIFICATION OF WITNESS**

2    **Q.    What is your name and business address?**

3    A.    My name is F. Wayne Lafferty and my business address is 2940 Cedar Ridge Drive,  
4           McKinney, Texas 75070.

5  
6    **Q.    By whom are you employed?**

7    A.    I am a Director and Partner of the Barrington-Wellesley Group ("BWG"), a full service  
8           management consulting firm serving the telecommunications and public utility industries.

9  
10   **Q.    Mr. Lafferty, on whose behalf are you testifying in this proceeding?**

11   A.    My testimony is presented on behalf of Cox Rhode Island Telcom, L.L.C., which is a  
12          facilities-based provider of telecommunications services in Rhode Island.

13  
14   **Q.    Please provide your background and experience.**

15   A.    I have been employed in the telecommunications industry for over 19 years. As a  
16          consultant I have provided advice and testimony on technical and public policy issues  
17          regarding competition, interconnection, access charges, universal service and incentive  
18          regulation matters facing the telecommunications industry to both individual firms and  
19          regulatory agencies. I have also assisted a start up company raising equity and  
20          performing due diligence on potential acquisitions. Before joining BWG, I was an  
21          independent consultant providing regulatory policy, technical, and strategic assistance to  
22          telecommunications firms. Prior to becoming a consultant, I was a member of the  
23          executive leadership team at Citizens Communications with direct responsibility for all  
24          regulatory and government affairs policies, programs and operations throughout the  
25          United States. My responsibilities included developing, supporting and implementing all

1 state and federal tariffs, cost studies, interconnection agreements and associated  
2 compliance activities for both Citizens' competitive and incumbent operations in over 20  
3 states. I also was the company's chief policy witness before regulatory agencies and was  
4 involved in the development of the Telecommunications Act of 1996 ("1996 Act"). Prior  
5 to working for Citizens, I held a series of positions of increasing responsibility in the  
6 regulatory organization with several GTE Corporation affiliates (now part of Verizon  
7 Communications). I have provided testimony on public policy and technical issues in  
8 many states as well as before the United States Congress. I am a graduate of Duke  
9 University with an undergraduate degree in economics and a masters degree in business  
10 administration. Exhibit FWL-1 contains a copy of my Curriculum Vitae.

#### 11 **B. PURPOSE OF DIRECT TESTIMONY**

12 **Q. Mr. Lafferty, what is the purpose of your Direct Testimony?**

13 A. My direct testimony provides the Rhode Island Public Utilities Commission  
14 ("Commission") with Cox's analysis, concerns and recommendations concerning  
15 Verizon New England Inc., d/b/a Verizon Rhode Island's ("Verizon's") proposed  
16 Successor Alternative Regulation Plan ("Verizon's Proposed Plan") in Rhode Island.  
17 Some aspects of Verizon's Proposed Plan are consistent with the developing competitive  
18 environment in the state and past policies of this Commission. However, there are  
19 several issues which are not clear in Verizon's Proposed Plan which Cox believes the  
20 Commission should address to ensure the continued development of competition and  
21 protection of customers from discriminatory actions in Rhode Island. Specifically, my  
22 testimony addresses issues related to: (i) promotions; (ii) bundled services; (iii) rate de-  
23 averaging; (iv) term of the plan; (v) review of cost studies which support Verizon's prices  
24 floors; and (vi) reporting requirements. At this time, Cox is not taking a position on the  
25 other proposals made by Verizon in this proceeding. However, given the inter-

1 relationship of many of the issues in this proceeding, the resolution of some of the issues  
2 not currently being addressed by Cox might modify or add to the recommendations made  
3 within this testimony.

#### 4 **C. SUMMARY OF TESTIMONY**

5 **Q. Please provide a summary of your Direct Testimony.**

6 A. Consumers in Rhode Island are beginning to experience limited wireline competition. In  
7 2002 the Commission approved an alternative regulation plan for Verizon ("Current  
8 Verizon Plan") which reflected a movement to a more market-based form of oversight for  
9 Verizon. In this docket Verizon has proposed a new alternative regulatory plan which  
10 would be in effect for a potentially unlimited period of time. While Cox does not agree  
11 with some aspects of Verizon's competitive and market power conclusions, in recent  
12 years competition has continued to take hold in the state, albeit at a slower rate.  
13 However, recent regulatory decisions by the Federal Communications Commission  
14 ("FCC"), which changed the market entry parameters in the telecommunications industry,  
15 are not yet reflected in the level of competition. Uncertainty driven by shifting  
16 economics and regulation, as well as industry consolidation threatens the continued  
17 development of competition. Pending mergers involving Verizon and MCI and SBC  
18 Corporation and AT&T will reduce the number of competitors. Therefore, the future of  
19 competition and its ability to restrain the use of incumbent market power in the industry  
20 is at a cross-road. It is critical for the Commission to implement policies which will  
21 ensure that consumers have alternatives in the Rhode Island telecommunications  
22 marketplace. Verizon remains a formidable national force with significant market power,  
23 and Rhode Island consumers must be protected from the long term implications of  
24 potentially damaging anti-competitive behavior.

1 The most significant new aspect of Verizon's Proposed Plan is the extension of  
2 significant regulatory and pricing flexibility to residential services. While Cox does not  
3 oppose the general direction of Verizon's Proposed Plan, it believes several components  
4 of the plan should be clarified and modified to ensure consumers continue to enjoy the  
5 benefits of competition well into the future.

- 6 • Verizon's Proposed Plan does not provide any parameters for promotions. Absent  
7 limited regulatory oversight and the application of the price floor requirements,  
8 promotions could be allowed to circumvent tariff and pricing rules on an unlimited  
9 basis at predatory price levels. Promotions could literally replace tariffed products.  
10 Verizon's Proposed Plan needs to specifically address promotions.
- 11 • Similar to the treatment of promotions, Verizon's Proposed Plan is silent as to the  
12 regulatory treatment of bundled offerings. To protect consumers from the risks  
13 associated with discriminatory pricing, Cox proposes that bundled services which  
14 include regulated retail services follow the same regulatory and pricing rules as  
15 required for regulated retail services offered individually.
- 16 • In the order approving the Current Verizon Plan the Commission included specific  
17 strict guidelines related to rate de-averaging which have not been addressed in  
18 Verizon's Proposed Plan. The same situations which gave rise to the Commission's  
19 concerns at the time of its March 31, 2003 Report and Order in Docket No. 3445  
20 ("March 31, 2003 Order") concerning the Current Verizon Plan exist today. The  
21 Commission should include the same specific restrictions on rate de-averaging in  
22 Verizon's Proposed Plan as it outlined in the March 31, 2003 Order.
- 23 • Verizon has made an unprecedented proposal to have its new plan effective for a  
24 potentially unlimited period of time. As noted earlier, recent decisions by the FCC

1 have changed the opportunities and costs for competitive entry in the three years  
2 since the Commission approved the Current Verizon Plan. It is likely industry  
3 consolidation and other regulatory changes during the next three years will also bring  
4 significant changes with an unknown outcome. Therefore, given the extent and speed  
5 of change which recent history has demonstrated, Cox proposes the Commission  
6 maintain a three year duration in approving the new plan.

- 7 • As noted earlier, Verizon has included price floors for tariffed, regulated retail  
8 services in its proposed plan. Furthermore, Verizon has agreed to self-certify that  
9 prices meet the price floor requirements, and included a provision for the  
10 Commission or the Division to review the cost studies underlying proposed retail  
11 price floors for new offerings or changes to the retail prices for existing services. Cox  
12 proposes the Commission specify a process for competitors to request such a review  
13 by the Commission and/or the Division.

- 14 • Cox does not oppose Verizon's proposals to reduce its retail reporting requirements.  
15 However, Cox requests the Commission to avoid implementing a framework under  
16 which competitors are burdened with preparing and filing reports not required of  
17 Verizon.

18 If the recommendation proposed by Cox are implemented, it will ensure that consumers  
19 are protected from the dangers of predatory pricing and discriminatory behavior which  
20 can inhibit the continuing development of competition and force existing competitors to  
21 curtail service in Rhode Island.  
22



**D. LIMITED REGULATORY OVERSIGHT AND PRICE FLOOR**  
**PROTECTION SHOULD APPLY TO VERIZON'S PROMOTIONS**

**Q. What guidance do Verizon's tariff provide concerning promotions in Rhode Island?**

A. Part A, Section 1 of Verizon's PUC RI Tariff No. 15 addresses "Promotional Programs." According to this tariff, Verizon may introduce promotions at its discretion based on market conditions subject to advance notification to the Commission. The time periods, locations and other conditions for promotions are not specified in the tariff, but are provided to the Commission by Verizon at the time of notification. Promotions can be used for a wide variety of purposes including, but not limited to, discounts, rate reductions or waivers. While the Commission has the opportunity to address any concerns with the promotions, Verizon has significant control over the timing, content and duration of promotions.

**Q. Has Verizon proposed any specific treatment for promotions in its new plan?**

A. No. Verizon's Proposed Plan is silent on the regulatory requirements associated with promotions.

**Q. Does the Commission regularly impose a time limit on promotions?**

A. No. The timing and duration of promotions is determined by Verizon. Promotions could theoretically last forever and for all intent and purpose replace standard regulated retail services.

**Q. Could the current practices followed for promotions harm consumers?**

A. Yes. Without price floor and time limit requirements, Verizon could price promotions at any level for any amount of time, opening the door for extended predatory pricing. Not

1       only does this behavior render the price-floor provisions of Verizon's Proposed Plan  
2       meaningless, if it is allowed to go unchecked, competitors could face economic barriers  
3       to entry which could threaten their ability to sustain service. If promotions are priced  
4       under cost for an extended (possibly unlimited) period of time causing competitors to  
5       curtail service in certain markets or to certain customer segments, customers will have  
6       less choice and ultimately pay higher prices.

7  
8       **Q.    Is supporting documentation available for Verizon's promotions which shows that**  
9       **the rates meet the price floor requirements outlined in the Verizon Proposed Plan?**

10      A.    No. In response to discovery, Verizon stated that it does not have cost studies for  
11      promotions in Rhode Island. Therefore, neither the Commission nor any other party is  
12      able to determine whether Verizon's promotions are priced at anti-competitive levels or  
13      whether other Verizon customers not eligible for promotions are subsidizing the  
14      customers which are able to take advantage of promotions.

15  
16      **Q.    Is this outcome consistent with the Commission's goal of moving towards a**  
17      **competitive market?**

18      A.    No. The Commission noted the following in the March 31, 2003 Order:

19                               *"The Commission is moving steadily towards a fully developed*  
20                               *competitive market with total pricing flexibility for all carriers.*  
21                               *This process must be gradual and evolutionary in nature;*  
22                               *otherwise, residential ratepayers and even the competitive process*  
23                               *could be harmed by rate shock or anti-competitive pricing."*<sup>1</sup>  
24  
25

26      Promotions provide consumers an opportunity to consider alternatives and should be  
27      encouraged. However, to address the Commission's stated concern with anti-competitive

---

<sup>1</sup> March 31, 2005 Order, page 60.

1 pricing, promotions must not be allowed to create a permanent loop hole in the regulatory  
2 and price floor protections in Verizon's Proposed Plan.

3  
4 **Q. How would Cox propose addressing this loop hole?**

5 A. Promotions should have to meet the price floor requirements for retail rates outlined in  
6 paragraph G of Exhibit A to the Testimony of Theresa L. O'Brien.<sup>2</sup> Any discounts or  
7 waivers of rates should not permit the total revenue derived from a customer through a  
8 promotion to fall below the total long run incremental costs associated with providing the  
9 services included in the promotion over the average duration of the customer's service.

10  
11 **Q. Have you developed specific edits to Verizon's Proposed Plan to implement Cox's  
12 proposal for promotions?**

13 A. Yes. However, given the similarity to Cox's concerns and proposals for bundles  
14 discussed below, it is best to provide proposed modifications which address both issues  
15 simultaneously.

16  
17 **E. BUNDLES OF SERVICES WHICH INCLUDE REGULATED LOCAL**  
18 **EXCHANGE SERVICES SHOULD BE SUBJECT TO THE PLAN'S**  
19 **REGULATORY PRICING AND PRICE FLOOR PROTECTIONS**  
20

21 **Q. What regulatory treatment for retail bundled services is outlined in Verizon's  
22 Proposed Plan?**

23 A. From the testimony and exhibits filed by Verizon which I have reviewed, it is unclear  
24 how bundles would be treated under Verizon's Proposed Plan.

---

<sup>2</sup> Exhibit A to the Testimony of Theresa L. O'Brien on Behalf of Verizon New England Inc., d/b/a Verizon Rhode Island dated August 19, 2005 (Hereinafter referred to as "Exhibit A").

1   **Q.    Can bundles include regulated retail services?**

2   A.    Yes. Bundles can include regulated retail services which are addressed by Verizon's  
3       Proposed Plan. In some cases bundles consist of multiple regulated retail services such  
4       as local service, local directory assistance, intraLATA toll and an optional feature  
5       package like the Verizon Regional Package Extra bundle. In other situations, the bundle  
6       provides an additional discount if a service not regulated by the Commission, such as  
7       internet access, wireless or Direct TV is also purchased. Furthermore, Verizon also  
8       offers bundles like the Freedom packages which may include regulated retail services,  
9       but are not reflected in Verizon's tariffs.

10

11   **Q.    Why would a customer choose to purchase a bundle of services in lieu of the**  
12       **individual standalone services which comprise the bundle?**

13   A.    Under either scenario the customer would receive the same functionality. However, often  
14       a bundle provides the customer the benefit of a discounted price or some other financial  
15       incentive.

16

17   **Q.    What has been the recent trend in the marketplace regarding bundles?**

18   A.    Incumbent carriers have been actively trying to move customers from individual services  
19       to bundles. The majority of marketing efforts for many carriers are geared towards  
20       selling packages of services for one set price.

21

22   **Q.    Why would a service provider prefer a customer to purchase a bundle?**

23   A.    From the provider's standpoint bundles provide several benefits. First, a customer often  
24       adds services such as calling features, high speed internet access or toll services. Second,  
25       by adding services customers shift more of their communications-buying dollars to a  
26       single provider bringing increased revenue opportunities with little incremental cost to

1 the provider. Third, when a customer concentrates his or her communications services  
2 with a single provider, he or she is less likely to switch suppliers. Therefore, since the  
3 service provider can grow its revenues in an efficient and often sustainable manner,  
4 bundling strategies are considered critical to survival in the emerging competitive  
5 environment. The growing emphasis being placed upon bundles increases the importance  
6 of addressing bundles in the alternative regulation plan.

7  
8 **Q. Are bundles becoming more popular?**

9 A. In some cases, yes. While a significant number of Verizon customers in Rhode Island  
10 continue to purchase plain old telephone service or POTS, carrier marketing activities  
11 have shifted towards efforts to stimulate the purchase of basic local exchange service as  
12 part of a bundle.<sup>3</sup>

13  
14 **Q. Can Verizon's bundles include both regulated retail services and other services?**

15 A. Yes. As noted earlier, often regulated retail services such as basic local exchange service  
16 are bundled with DSL, long distance or wireless services which are not regulated in the  
17 same manner by this Commission. The services which comprise a bundle might be  
18 provisioned by multiple Verizon Corporation entities, but sold as part of a package by  
19 one Verizon entity or priced at a discount if multiple services are purchased. For  
20 example, Sections 15.9.2 (D), 15.10.2 (D) and 15.11.2 (D) in Part A of Verizon's PUC RI  
21 Tariff No. 15 include a "bundle discount" for the purchase of multiple Verizon services.<sup>4</sup>  
22 In other cases, the bundle might not be referenced in Verizon's tariffs. However, from

---

<sup>3</sup> Cox requested information from Verizon in discovery to determine the number of residential and business lines which were not purchased as part of a bundle or in conjunction with optional services; however, Verizon responded that the information was not tracked.

<sup>4</sup> The amount of the discount is provided in Part M, Sections 15.9, 15.10 and 15.11 of Verizon's PUC RI Tariff No. 15.

1 the customer's standpoint any bundle is one product which provides multiple services  
2 (including in many cases regulated retail services) along with other services.  
3

4 **Q. If the Commission wants to continue promoting competition for wireline service,**  
5 **should it apply different regulatory treatment to retail services purchased**  
6 **individually and through bundles?**

7 A. No. If consumers decide to purchase regulated retail services as part of a bundle, they  
8 should be assured of the same protections from discriminatory pricing behavior as they  
9 would receive if the services were bought individually.  
10

11 **Q. Has Verizon provided any evidence that different regulatory treatment of bundles is**  
12 **warranted?**

13 A. No. Verizon's proposal is silent on the regulatory treatment for at least some of its  
14 bundles.  
15

16 Q. What options exist for Verizon to provide customers a discount for bundles which  
17 include discounted regulated retail services?

18 A. Verizon can either tariff the bundle or file a promotional letter with the Commission  
19 offering the discount under specific circumstances for a chosen period of time. However,  
20 in either case, the price floor test in Section G of Exhibit A would apply.  
21

22 Q. Would these options be any different if the bundle included both regulated retail and non-  
23 regulated services?

24 A. No. Whenever a discount is offered on regulated retail services, one of these two options  
25 should be followed.  
26

1 **Q. Has Verizon provided documentation that its rates for bundles which include**  
2 **regulated retail services meet the price floor test proposed by Verizon?**

3 A. Cox does not know whether Verizon has provided this information to the Commission or  
4 the Division. However, in discovery Cox asked Verizon for copies of the cost studies for  
5 its bundles, and Verizon objected to the discovery without providing any documentation.  
6 Therefore, this Commission cannot determine whether Verizon's rates for its bundles  
7 which include regulated retail services are appropriate or anti-competitive.

8  
9 **Q. How does Cox propose the Commission address this void in Verizon's Proposed**  
10 **Plan?**

11 A. Cox proposes that the Commission modify Verizon's Proposed Plan to require the  
12 application of the pricing and price floor requirements to both standalone regulated retail  
13 services and bundles which include regulated retail services. Bundles which do not  
14 include regulated retail services would not fall under the regulatory and price floor rules.

15  
16 **Q. Has Cox developed language for its proposed changes associated with bundles and**  
17 **promotions?**

18 A. Yes. The following changes would be made to Verizon's Proposed Plan as outlined in  
19 Exhibit A.

20 A. Rates and charges for all regulated retail services including  
21 bundles which include regulated retail services will increase or  
22 decrease in response to market conditions. Pricing and rate  
23 structures for these services will be at the discretion of Verizon RI.

24  
25 G. At such time as Verizon RI files any tariff or notice of a  
26 promotion proposing decreases in any of its retail rates for services  
27 currently offered or proposing initial or promotional rates for new  
28 offerings including service bundles which include regulated retail  
29 services, Verizon RI will include with such filing a certification  
30 that such reduced rates, promotional rates or initial rates are not

1 less than the Long Run Incremental Cost (LRIC) of such services  
2 or offerings. Upon the subsequent request of the Commission or  
3 the Division, Verizon RI shall file the necessary support  
4 documentation to confirm that such reduced, promotional or initial  
5 rates meet said price floor. In all proceedings concerning Verizon  
6 RI's compliance with the price floor, Verizon RI retains the burden  
7 of proving that its proposed prices exceed the appropriate LRIC  
8 price floor.

9 These minor, but important changes proposed by Cox would not inhibit Verizon's ability  
10 to introduce new services, modify existing prices or conduct promotions. Verizon would  
11 still be free to compete in a non discriminatory manner in Rhode Island.

12  
13 **F. THE COMMISSION SHOULD MAINTAIN ITS EXISTING**  
14 **LIMITATIONS FOR PRICE DE-AVERAGING**  
15

16 **Q. How has the Commission recently addressed the ability of Verizon to de-average**  
17 **prices in Rhode Island?**

18 A. Verizon's ability to de-average prices was specifically addressed in detail in the  
19 Commission's March 31, 2003 Order. Based on this order, it does not appear that  
20 specific language concerning rate de-averaging had been proposed at the time for the  
21 Current Verizon Plan. However, the Commission noted the following in its order:

22  
23 *"Accordingly, if VZ-RI files tariffs to geographically deaverage*  
24 *retail rates that were uniform statewide or within a particular*  
25 *calling area, under the PRSP,<sup>5</sup> VZ-RI must rebut the presumption*  
26 *that the proposed rates do not constitute improper discrimination*  
27 *among similarly situated customers. This presumption may prove*  
28 *particularly difficult to rebut if the proposed geographically*  
29 *deaveraged rates affect residential customers."*<sup>6</sup>

30 Therefore, the Commission has clearly identified the potential for rate de-averaging to be  
31 discriminatory and has required Verizon to bear the burden of proof that de-averaged

<sup>5</sup> Price Regulation Successor Plan for New England Telephone approved by the Commission in 2000.

<sup>6</sup> March 31, 2003 Order, page 56.



1 rates are not inappropriately discriminatory. Since Verizon's Proposed Plan extends  
2 regulatory flexibility to residential services, the Commission's concerns are even more  
3 relevant at this time.  
4

5 **Q. Has Verizon proposed specific treatment of rate de-averaging in this proceeding?**

6 A. No. Like the situations for bundles and promotions discussed above, Verizon's proposed  
7 plan is silent on the issue of rate de-averaging. While Verizon has made no specific  
8 proposal nor provided any evidence that the Commission should change its policy on this  
9 issue, its proposed plan would leave the door open to de-average rates on an exchange by  
10 exchange, urban/rural or even customer-specific basis.  
11

12 **Q. Has anything changed which might provide the Commission a new direction for**  
13 **addressing rate de-averaging?**

14 A. No. Verizon offers no evidence or legal reasoning in its Proposed Plan or proffered  
15 testimony that the Commission should overlook its prior precedent determining that any  
16 future tariff filing seeking to deaverage rates must overcome a rebuttable presumption  
17 that such a proposal violates Rhode Island law.  
18

19 **Q. Are there any other requirements in Rhode Island which might provide guidance**  
20 **regarding rate deaveraging?**

21 A. Yes. The Commission's previously referenced March 31, 2003 Order stated the  
22 following:  
23

24 *"The Commission will vigorously enforce the anti-discrimination*  
25 *provisions of Title 39 of the Rhode Island General Laws and will*  
26 *continue to be vigilant to any rates that appear to constitute price*  
27 *discrimination."*<sup>7</sup>

---

<sup>7</sup> Id.

1 Therefore, the Commission is clearly aware of the statutory requirements and recognizes  
2 the need to be very diligent about its oversight requirements for price discrimination.  
3

4 **Q. Has any price de-averaging been permitted for Verizon in the past?**

5 A. Yes. Verizon has been allowed to de-average rates, including primary basic residential  
6 local exchange rates, by local calling area based upon the number of callable access lines.  
7 However, in these situations all similarly situated customers have been treated equitably.  
8

9 **Q. Could you discuss whether and how rate de-averaging might be used to engage in  
10 anti-competitive pricing?**

11 A. As the Commission concluded in its March 31, 2003 Order, Verizon could decrease rates  
12 in one area if the state where a competitor is operating, but not extend the rate decrease to  
13 all similarly situated customers elsewhere in the state.  
14

15 **Q. How might this pricing behavior impact consumers?**

16 A. Consumers, both residential and commercial, in the areas of Rhode Island with less or no  
17 competition would be forced to pay higher rates for the same service as those who have  
18 competitive alternatives. If rate de-averaging is allowed pursuant to Verizon's Proposed  
19 Plan, it could result in rural consumers with little or no real competitive alternatives  
20 paying more for local service than those in urban markets.  
21

22 **Q. Is competition uniform throughout Rhode Island?**

23 A. While Cox has not reviewed current specific wire center data for Verizon in Rhode  
24 Island, my experience suggests that competition varies by geographic location. It is  
25 common for competition to be more concentrated in urban and possibly some suburban  
26 markets. The Commission recognized this reality in its March 31, 2003 Order.

1  
2           *"As a general rule, urban areas have more CLEC market share*  
3           *than in suburban and rural areas. In some wire centers, however,*  
4           *the extent of CLEC market share for residential customers is de*  
5           *minimus.*"<sup>8</sup>

6           Verizon has not offered any evidence that the Commission's conclusion above is no  
7           longer valid. If price de-averaging is permitted by Verizon, it is likely such pricing will  
8           be used to target competitive concerns, and consumers, especially in residential markets,  
9           will face a discriminatory situation. Competition will be harmed as anti-competitive  
10          pricing is directed towards markets where competition has begun at the expense of  
11          consumers in other parts of the state. The Commission has already decided that it is  
12          inappropriate to promote competition merely through de-averaging rates for both the  
13          telecommunications and electric energy supply industries.<sup>9</sup>

14  
15   **Q.   Does Verizon's Proposed Plan cover its entire Rhode Island operations?**

16   A.   Yes. It is my understanding the plan would be implemented statewide like the Current  
17          Verizon Plan.

18  
19   **Q.   Has anything changed which might provide the Commission a new direction for**  
20          **addressing rate de-averaging?**

21   A.   No. Competition is still developing on a non uniform basis. The potential to use rate de-  
22          averaging to target more competitive areas at the expense of consumers without  
23          alternatives still exists. If rates are de-averaged, Verizon will have the ability to  
24          strategically price services lower in competitive areas until competitors are driven out of  
25          the market and recoup its losses by pricing services higher in less competitive markets  
26          especially since no price ceilings will be in place. After eliminating its competitors,

---

<sup>8</sup> March 31, 2003 Order, page 55.

<sup>9</sup> Id.

1 Verizon would be free to raise prices above the level a competitive marketplace would  
2 establish. As a result, consumers would be harmed by the artificially elevated prices  
3 Verizon would be able to charge. Verizon's Proposed Plan must not provide the  
4 opportunity for Verizon to de-average prices with the intent of driving competitors out of  
5 a market. Therefore, the implications of rate de-averaging for both consumers and  
6 competition now are the same as when the Commission issued its March 31, 2003 Order.  
7

8 **Q. What specific changes would be required to Verizon's Proposed Plan to reflect**  
9 **Cox's concern which the Commission has shared in the past about rate de-**  
10 **averaging?**

11 **A.** The Commission should add the following language to the end of Section A of Verizon's  
12 Proposed Plan as shown in Exhibit A:  
13

14 Provided however that similarly situated customers will be subject  
15 to the same regulated retail prices and rate structures unless  
16 otherwise specifically approved by the Commission upon a  
17 showing by Verizon RI that differential pricing for similarly  
18 situated customers is not discriminatory and such pricing covers all  
19 costs.

20 This language would clearly codify the Commission's policy regarding rate de-averaging  
21 as outlined in its March 31, 2003 Order. Verizon will still have the opportunity to  
22 propose de-averaged rates; however Verizon would have to make a showing that the  
23 differential pricing is appropriate and specific Commission approval would be required.  
24

25 **G. THE COMMISSION SHOULD REQUIRE A THREE-YEAR TERM FOR**  
26 **VERIZON'S PROPOSED PLAN**  
27

28 **Q. What term has Verizon proposed for the new Alternative Regulatory Plan?**

1 A. Verizon has proposed an indefinite term. The plan does include an option for Verizon  
2 itself or the Division to petition the Commission to modify the terms and conditions of  
3 the plan should certain specific limited situations arise. However, absent one of the  
4 limited situations occurring and one of these two parties proactively filing a petition, it  
5 appears as if Verizon desires its plan to last indefinitely.

6  
7 **Q. Does the current regulatory environment support an indefinite term?**

8 A. No. As mentioned earlier, recent FCC rulings have decreased the opportunities for new  
9 competitors to enter the market and increased the cost for many remaining competitors.  
10 UNE-P and certain unbundled high capacity loops and transport mechanisms have been  
11 eliminated as methods for competitors to provision services. There is significant  
12 uncertainty surrounding the ultimate impact of these FCC decisions including the  
13 implications for the future sustainability of a robust competitive marketplace.

14  
15 **Q. Are there any other factors impacting the level of uncertainty in the marketplace?**

16 A. Yes. Industry consolidation through the acquisition of MCI by Verizon and AT&T by  
17 SBC Corporation will significantly increase the size, network reach and market share for  
18 the nation's two largest incumbent local exchange carriers. Until these transactions are  
19 closed and the companies' operations consolidated, the Commission will not know all of  
20 the implications for consumers and the future of competition in Rhode Island. If other  
21 large acquisitions are any indication, it will take several years for all of the ramifications  
22 to be known.

23  
24 **Q. What term exists for the Current Verizon Plan?**

25 A. Three years.  
26

1 **Q. Has Verizon provided any justification for the change from a three-year to an**  
2 **indefinite term?**

3 A. No. The company's testimony and exhibits do not address this issue or provide any  
4 evidence why a specific term should not be specified.  
5

6 **Q. Given these developments and the associated uncertainty, how does Cox propose the**  
7 **Commission handle the term for Verizon's Proposed Plan?**

8 A. Cox recommends a three-year term be placed on the plan. Three years is consistent with  
9 the Current Verizon Plan and should be adequate time for the Commission to determine  
10 the implications of the recent FCC decisions and industry acquisitions. If the plan is  
11 working after three years, Verizon can always ask for an extension.  
12

13 **Q. Has Cox developed any language modifications for Verizon's Proposed Plan to**  
14 **reflect this proposal?**

15 A. Yes. Section H of Exhibit A should be changed as follows:  
16

17 The term of this Plan shall be three-years-indefinite. All pricing  
18 rules for services included in the plan will remain in effect for  
19 three-years-indefinitely or until the Commission approves a  
20 different plan whichever comes first.  
21

22 **H. VERIZON'S PROPOSED PLAN SHOULD INCLUDE A PROVISION TO ALLOW**  
23 **COMPETITORS TO REQUEST THAT THE COMMISSION REVIEW PRICE**  
24 **FLOOR STUDIES**  
25

26 **Q. What oversight for price floors does Verizon propose?**

27 A. Consistent with prior Commission rulings, Verizon has proposed that prices can not be  
28 set below LRIC. All requests to reduce or establish new prices will be accompanied by a

1 self-certification by Verizon that this requirement is met. Furthermore, upon request of  
2 the Commission or the Division, Verizon will provide support documentation for the  
3 prices to the Commission or the Division for review.  
4

5 **Q. Is this level of oversight adequate?**

6 A. No. While self-certification is expeditious in some situations, the parties most impacted  
7 by Verizon's pricing decisions should have the opportunity to request that the  
8 Commission investigate whether prices are anti-competitive. Competitors have  
9 knowledge of the marketplace and products to promptly and accurately determine  
10 whether prices likely fail to comply with the LRIC based floor.  
11

12 **Q. How does Cox recommend the Commission address the review of price floor**  
13 **documentation?**

14 A. Cox recommends the Commission modify the requirements in Section G of Exhibit A to  
15 allow validly registered telecommunications providers to request an investigation of  
16 Verizon's self-certification that its reduced or initial rates are not less than LRIC. If this  
17 proposal would create a burden for the Division, then competitors should be permitted  
18 access to Verizon's cost studies after the execution of appropriate non-disclosure  
19 agreements.  
20

21 **Q. What specific language changes should be made to Section G of Exhibit A?**

22 A. The second sentence of Section G should be modified as follows:  
23

24 Upon the subsequent request of the Commission, ~~or the Division or~~  
25 a validly registered telecommunications provider, Verizon RI shall  
26 file the necessary support documentation to confirm that such  
27 reduced, promotional or initial rates meet said price floor.<sup>10</sup>

---

<sup>10</sup> The suggested changes for this sentence include Cox's proposed language related to promotions discussed earlier.

1                   **I. COMPETITOR REPORTING SHOULD NOT EXCEED VERIZON'S**  
2   **REQUIREMENTS**  
3

4   **Q.    What changes to its reporting requirements has Verizon proposed?**

5   A.    In Section F of Exhibit A, Verizon has asked the Commission to eliminate Verizon's  
6          annual financial reporting, semi-annual competitive profiles and monthly service quality  
7          reports and associated service quality penalties.  
8

9   **Q.    Is Cox opposed to these modifications?**

10 A.    No. As long as Verizon is still required to comply with reasonable Commission or  
11         Division requests for information concerning its operations, Cox is not opposed to the  
12         relief sought by Verizon in Rhode Island.  
13

14 **Q.    Does Cox have any other concerns with Verizon's proposal regarding reporting**  
15 **requirements?**

16 A.    Not at this time. However, Cox asks the Commission to remain diligent as the level of  
17         Verizon's regulatory requirements is relaxed to ensure that competitors are not burdened  
18         with reporting or other requirements which exceed those applied to Verizon. It is  
19         important that the Commission not establish any new reporting requirements for  
20         competitors which include reports which have been eliminated for Verizon.  
21

22 **Q.    Are any language changes required to Verizon's Proposed Plan to address this**  
23 **concern?**

24 A.    Not at this time.  
25



1 **J. OTHER CONSIDERATIONS**

2

3 **Q. There are many aspects of Verizon's Proposed Plan for which Cox has chosen not to**  
4 **provide testimony. Does Cox's silence indicate agreement with the proposals and**  
5 **related testimony presented by Verizon?**

6 A. Not necessarily. Cox has proposed specific changes it believes are necessary in the  
7 context of the specific Verizon proposal to ensure consumers are allowed to benefit from  
8 the growth of a competitive marketplace in Rhode Island. These changes, which should  
9 be relatively minor in the context of Verizon's overall proposal, are critical to the  
10 Commission's ability to preserving and enhancing customer choice for retail  
11 telecommunications service in the state. In its March 31, 2003 Order, the Commission  
12 clearly indicated its two fold role concerning competition and customer protection:

13  
14 *"The Commission will not guarantee the success of any carrier in*  
15 *the competitive marketplace, but it will act to preserve the*  
16 *competitive process and to protect ratepayers."*<sup>11</sup>

17 Cox's proposals in this proceeding are completely aligned with this role of the  
18 Commission.

19

20 **Q. Verizon has presented significant data concerning the level of competition and its**  
21 **market power in Rhode Island. Does Cox support Verizon's analysis?**

22 A. Not necessarily. Cox has not undertaken a detailed analysis of the data concerning  
23 competition and market power presented by Verizon. However, the Commission must  
24 consider the significant national scope and size of Verizon's operations and the  
25 associated implications for the future of competition. Verizon operates in virtually every  
26 state providing some combination of voice, long distance, broadband and/or wireless

---

<sup>11</sup> March 31, 2003 Order, page 60.

1 services. Further, in many of those states, Verizon retains significant monopoly power  
2 while facing little or no competition. In addition, Verizon is actively deploying a fiber  
3 based network to large portions of its retail customer base in Rhode Island and other  
4 states to facilitate entry into the video business. Through its regulatory and legislative  
5 initiatives, Verizon is carving out streamlined local video franchise requirements for  
6 itself. Soon Verizon's network reach will increase exponentially through the acquisition  
7 of MCI, and Verizon will dwarf every other telecommunications provider in the United  
8 States with the exception of SBC Communications. At the same time many competitors  
9 are consolidating or seeking bankruptcy protection. Clearly the competitive environment  
10 is continuing to evolve in Rhode Island and throughout the United States and Verizon  
11 continues to be a dominant provider. The Commission can ill-afford to ignore the  
12 increasing vertical and horizontal integration, and concomitant market power, of Verizon  
13 across the country, for Verizon would be able to exercise such market power to hinder or  
14 eliminate consumer choice here in Rhode Island.

15  
16 **Q. Do any other factors contribute to the need for caution?**

17 A. Yes. Recent FCC rulings have eliminated competitor access to certain UNEs including  
18 the UNE Platform or UNE-P which has been used extensively as a competitive entry  
19 mechanism. In addition, the FCC is undertaking an extensive investigation of inter-  
20 carrier compensation and universal service funding. The full implications of these  
21 regulatory actions combined with the potential implications of industry consolidation  
22 through mergers are not currently known. The resulting uncertainty plays a significant  
23 role in establishing barriers to entry by increasing competitors' ability to obtain the  
24 financial and human resources required to invest in new telecommunications facilities  
25 and products and expand markets. As investors become even more cautious, the cost of  
26 borrowing by potential competitors is sure to increase and competitors will be hard

1 pressed to find capital to make significant investments in facilities. The combination of  
2 less capital and higher UNE prices can only serve to increase uncertainties and limit  
3 future competition.  
4

5 **Q. Is a detailed analysis of the competitive and market power claims made by Verizon**  
6 **required for the Commission to grant the relief sought by Verizon in this**  
7 **proceeding?**

8 A. Based on the level of regulatory flexibility and associated requirements Verizon has  
9 proposed and prior Commission rulings, such an analysis is not required at this time.  
10 Verizon's proposals with the modifications proposed herein by Cox can be implemented  
11 without a detailed analysis of Verizon's competitive and market power claims. However,  
12 Cox reserves the right to present additional analyses and modifications should Verizon or  
13 any other party suggest changes to Verizon's Proposed Plan which are inconsistent with  
14 the Rhode Island marketplace and the goals of increased competition and consumer  
15 protection.  
16

17 **Q. Did the Telecommunications Act of 1996 ("1996 Act") remove all barriers to**  
18 **competitive entry in local exchange service markets?**

19 A. No. The 1996 Act only eliminated many of the legal and regulatory barriers to local  
20 exchange service competition. Also, the 1996 Act and subsequent FCC decisions  
21 established the requirement for incumbent LECs like Verizon to interconnect networks,  
22 sell unbundled network elements at forward-looking cost-based rates and resell retail  
23 services at a discount. However, neither the 1996 Act nor any FCC or Commission  
24 actions eliminated the high financial costs of entry in the local telecommunications  
25 market. In fact recent court and FCC rulings have increased some of the costs of market  
26 entry, mostly at the behest of incumbent telephone companies like Verizon. Though

1 some parties may try to argue that the entry barriers to the local telecommunications  
2 marketplace have been completely removed by the 1996 Act, the statute did nothing to  
3 remove the economic entry barriers created by the high fixed entry costs in the  
4 telecommunications industry which Verizon acknowledges. Therefore, the uncertainty  
5 surrounding the future availability and pricing of UNEs combined with the high fixed  
6 costs of entry and scarce available capital resources provide little, if any, assurance that  
7 the marketplace on its own can fully replace the need for regulatory oversight.

#### 8 9 **K. SUMMARY OF RECOMMENDATIONS**

10  
11 **Q. Could you please summarize Cox's recommendations regarding Verizon's proposed**  
12 **alternative regulation plan?**

13 A. Yes. Verizon's Proposed Plan represents a continued movement towards less regulation  
14 and more marketplace control of pricing for regulated retail services. Cox has  
15 recommended several critical changes which are required to protect Rhode Island  
16 consumers from anti-discriminatory actions and help a competitive marketplace to  
17 continue to develop in the state. Specifically the Commission should make the following  
18 modifications to Verizon's Proposed Plan:

- 19 • Promotions which involve regulated retail services should be subject to the price floor  
20 requirements in Section G of Exhibit A.
- 21 • Bundled services which include regulated retail services should follow the same  
22 regulatory and pricing rules as required for regulated retail services offered  
23 individually.

- 1       • Rate de-averaging by Verizon should be prohibited absent a showing by Verizon that  
2       the de-averaged rates will not discriminate towards similarly situated customers and  
3       that the rates cover all costs. In addition specific Commission approval for the de-  
4       averaged prices should be required.
- 5       • Verizon's Proposed Plan should be limited to a three-year term for several reasons  
6       including the fact that such a term is consistent with the duration of time in the  
7       Current Verizon Plan and that it will provide an adequate opportunity for the  
8       Commission to determine the implications of recent FCC decisions, industry  
9       acquisitions, and overall market conditions within the State..
- 10      • The Commission should include a provision for validly registered  
11      telecommunications providers to request a review by the Division of the cost studies  
12      and other documentation provided by Verizon as evidence of compliance with the  
13      price floor aspects of the plan.
- 14      • As Verizon's reporting requirements are reduced, the Commission should ensure that  
15      competitors are not burdened with preparing and filing reports not required of  
16      Verizon.

## 18                                   **L. CONCLUSION**

19   **Q.     Does this conclude your Direct Testimony?**

20   **A.     Yes.**

**CURRICULUM VITAE  
OF  
F. WAYNE LAFFERTY**

## **F. Wayne Lafferty**

Mr. Lafferty has 19 years of experience working within the telecommunications industry, in the United States. He has participated in the operation and evolution of that industry including the analysis and implementation of the 1996 Telecommunications Act which has brought about significant change for that industry. His experiences have touched many areas of the industry including incumbent local exchange ("ILEC"), competitive local exchange ("CLEC"), and long distance and broadband operations. He has first hand experience with the technological, product and regulatory changes driving the dramatic evolution of the telecommunications industry in recent years. In addition, Mr. Lafferty has played a leadership role in the operation of a diversified telecommunications enterprise developing and implementing strategies and programs to provide quality customer and community service, develop employees, grow revenues, build and maintain facilities and operate efficiently. He has first hand experience with managing marketing, regulatory, public relations, strategic planning, acquisition analysis and implementation and other administrative responsibilities.

His specific professional focus over the years has been in the area of state and federal regulatory and public policy development and implementation. His experiences over the years range from developing and managing state rate case proceedings to early (pre 1996) efforts to develop the policies to implement competition and deregulation to shaping the rules and regulations guiding the unfolding competitive environment in the telecommunications industry. Throughout his entire career, he has focused on the importance of effective communication and seeking realistic

balanced solutions to regulatory, operational and financial challenges using the most effective processes.

Mr. Lafferty is considered a leader in the public policy arena in the United States, having testified before state regulators in Arizona, Arkansas, California, Connecticut, Idaho, Illinois, Iowa, Kansas, Montana, Nebraska, New York, North Dakota, Ohio, Oklahoma, Virginia and Wyoming and before the United States Congress.

Mr. Lafferty has participated in a variety of telecommunications' activities including:

- Development and implementation of balanced public policy advocacy programs for the benefit of a diversified telecommunications enterprise.
- Implementation of regulatory and operational requirements stemming from the 1996 Act and subsequent regulatory rulings.
- Development of requirements, processes and procedures to negotiate and implement interconnection arrangements.
- Development and analysis of cost studies for products, unbundled elements and interconnection services.
- Analysis of federal and state cost recovery mechanisms including access charges and universal service programs.
- Negotiation of interconnection matters and disputes on behalf of competitive and incumbent telecommunications entities.
- Analysis and implementation of incentive regulatory programs.
- Development of processes to implement the FCC's cost allocation rules (Part 64).



- Development and management of state rate and other major regulatory proceedings during time of significant telecommunications network and product expansion.
- Development of state and federal legislation to implement competition, and revise regulatory rules.
- Development and implementation of a start up telecommunications operation to provide diversified services to over 400,000 customers.
- Divestiture and/or acquisition of telecommunications properties covering over 2,000,000 customers.
- Raising equity investment and performing due diligence for the acquisition of rural telephone properties.
- Development and implementation of credit and collection policies for deregulated businesses as premises equipment and other services became deregulated.
- Development of portions of the 1996 Telecommunications Act.

Over his career, Mr. Lafferty has held positions of increasing responsibility with GTE Corporation (now part of Verizon Communications) and Citizens Communications/Electric Lightwave. Most of his responsibilities have been in the regulatory and government affairs areas. However, leadership positions have provided experience with all aspects of managing a diversified telecommunications operation.

In 2001 he founded LKAM Consulting Services to provide consulting services to telecommunications entities (incumbents and new entrants) and other industry players on a variety of regulatory, public policy and interconnection matters. In 2003, Mr. Lafferty became a

Principal in the Barrington-Wellesley Group continuing his telecommunications consulting activities in the areas of interconnection, economic analysis and regulatory policy and adding the full scope of management consulting to his potential responsibilities. He is now a Partner/Director of the firm. Mr. Lafferty's recent consulting projects have been on behalf of both competitive and incumbent telecommunications interests.

Mr. Lafferty is a native of Baltimore, Maryland and a graduate of Duke University with an undergraduate degree in economics and an MBA. He participates in industry trade associations and has spoken at seminars over the years on a variety of technical and public policy issues. He currently lives in McKinney, Texas (a Dallas suburb).

359171\_1.doc